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PACIFIC MARITIME ASSOCIATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JAMES TROY WALKER,

Plaintiff,

vs.

PACIFIC MARITIME ASSOCIATION;
INTERNATIONAL LONGSHORE
UNION LOCAL 10; MARINE
TERMINALS CORPORATION; PACIFIC
C&H SUGAR,

Defendants.

Case No. C07-03100 BZ

**DEFENDANT PACIFIC MARITIME
ASSOCIATION'S REPLY
MEMORANDUM AND STATEMENT OF
NON-OPPOSITION TO ITS MOTION TO
DISMISS PURSUANT TO F.R.C.P. 12(B)(6)**

Date: September 19, 2007
Time: 10:00 A.M.
Courtroom: G, 15th Floor
Magistrate Judge Bernard Zimmerman

Plaintiff James Troy Walker has failed to file opposition to Defendant Pacific Maritime Association ("PMA") motion to dismiss, and has not filed opposition to Defendant C&H Sugar's motion to dismiss, which PMA joined. Therefore, PMA hereby requests that this Court grant both requests to dismiss Plaintiff's Complaint.

Following the filing of the above referenced motion, this Court ordered that Plaintiff Walker file any opposition to the dismissal motions by August 22, 2007. To date, no such opposition has been filed. Plaintiff's failure to oppose any of the legal arguments, as outlined in the moving papers, waives any argument he may have in opposition. *See Jerkovich v. Fresno-Madera Chapter of American Red Cross*, 2005 WL 2030637, *24 (E.D. Cal. 2005) ("[f]ailure to

1 oppose a claim may constitute a waiver of that claim”); *Bethea v. Burnett*, 2005 WL 1720631,
 2 *17 (C.D.Cal. 2005) (construing failure to oppose argument as a waiver of any opposition
 3 plaintiff may have had); *City of Arcadia v. U.S. Environmental Protection Agency*, 265 F.Supp.2d
 4 1142, 1154 (N.D.Cal. 2003) (implication of lack of response to argument is that opposition to the
 5 argument is waived).

6 In any case, Plaintiff has not exhausted his administrative remedies because his
 7 administrative filing does not provide PMA with factual allegations of claimed discrimination.
 8 Furthermore, Plaintiff’s Complaint is equally devoid of factual allegations to state a cognizable
 9 claim under Title VII. Moreover, as set forth in Defendant C&H’s moving papers, Plaintiff’s
 10 claims are untimely.

11 Accordingly, Defendants are entitled to dismissal of the Complaint for each of the above
 12 independent legal reasons.

13 Dated: August 29, 2007

MORGAN, LEWIS & BOCKIUS LLP

15 By: /s/ L. Julius M. Turman
 16 L. Julius M. Turman
 17 Attorneys for Defendant
 18 PACIFIC MARITIME ASSOCIATION
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PROOF OF SERVICE BY MAIL

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is One Market, Spear Street Tower, San Francisco, California 94105-1126. On August 29, 2007, I served the within document(s):

**DEFENDANT PACIFIC MARITIME ASSOCIATION'S REPLY
MEMORANDUM AND STATEMENT OF NON-OPPOSITION TO ITS
MOTION TO DISMISS PURSUANT TO F.R.C.P. 12(B)(6)**

- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☒ by placing the document set forth above in a sealed envelope with postage thereon fully prepaid, in the United States Mail at San Francisco, California addressed as set forth below.
- ☐ by placing the document(s) listed above in a sealed Federal Express envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal Express agent for delivery.
- ☐ by causing the document(s) listed above to be personally delivered to the person(s) at the address(es) set forth below.
- ☐ by transmitting via electronic mail the document(s) listed above to each of the person(s) as set forth below.

**James Troy Walker
Post Office Box 9301
Vallejo, CA 94591**

Executed on August 29, 2007, at San Francisco, California.

I declare under penalty of perjury, under the laws of the State of California and the United States of America, that the foregoing is true and correct.

By: /s/ Monica Brennan
Monica Brennan